

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	Case No. 20-4043
Plaintiff,	)	
	)	
v.	)	
	)	
ROBERT J. BOE &	)	
& MARY P. ATKINS BOE,	)	
	)	
Defendants.	)	
_____	)	

**UNITED STATES' COMPLAINT**

Plaintiff, the United States of America, for its complaint alleges as follows:

1. This is a civil action in which the United States seeks to:
  - a. Reduce to judgment assessments made against Robert J. Boe and Mary P. Atkins Boe for unpaid federal income tax liabilities;
  - b. Reduce to judgment assessments made against Mary P. Atkins Boe for unpaid unemployment tax liabilities; and
  - c. Reduce to judgment assessments made against Mary P. Atkins Boe for unpaid employment tax liabilities.

**Authorization**

2. This action has been authorized by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and is brought at the direction of a delegate of the United States Attorney General pursuant to 26 U.S.C. § 7401.

### **Jurisdiction and Venue**

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345 and 26 U.S.C. § 7402.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

### **Parties**

5. Plaintiff is the United States of America.

6. Defendant Robert J. Boe is located within this judicial district and is named in Count I of this complaint.

7. Defendant Mary P. Atkins Boe is located within this judicial district and is named a defendant to Counts I, II, and III of this complaint.

### **COUNT I: REDUCE TO JUDGMENT FEDERAL INCOME TAX ASSESSMENTS AGAINST ROBERT J. BOE AND MARY P. ATKINS BOE**

8. The United States incorporates by reference paragraphs 1-7 of this complaint

9. Defendants Robert J. Boe and Mary P. Atkins Boe (collectively “the Boes”) are a married couple who reside in Sioux Falls, South Dakota.

10. For tax years 2012, 2013, 2014, and 2015, the Boes filed joint federal income tax returns (Form 1040), but failed to pay the taxes they reported by owed.

11. For tax years 2013, 2014, and 2015, the Boes filed their joint federal income tax returns late.

12. For tax years 2012, 2013, 2014, and 2015, a delegate of the Secretary of the Treasury made assessments against Robert J. Boe and Mary P. Atkins Boe for federal income taxes (Form 1040), penalties, and interest.

13. The amount due for the 2012, 2013, 2015, and 2015 federal income tax assessments (with interest, penalties, and any statutory additions to tax) is **\$70,354.58 as of January 31, 2020.**

14. The assessments identified in paragraph 12 above were made in accordance with law.

15. Interest and statutory additions will continue to accrue on the amounts owed the United States until the balance is paid in full.

16. Notices of the assessments referred to in paragraph 12 and demands for payment, were made on or about the dates of assessment. Despite notices of the assessments and demands for payment, Robert J. Boe and Mary P. Atkins Boe have failed to pay over the liabilities set forth in paragraph 13.

17. As a result, Robert J. Boe and Mary P. Atkins Boe are indebted to the United States for unpaid income taxes, penalties, and interest totaling \$70,354.58 as of January 31, 2020, plus interest and other statutory additions as allowed by law that have accrued, and will continue to accrue, until paid in full.

WHEREFORE, the United States requests that the Court:

A. Enter judgment on Count I of this complaint in favor of the United States and against Robert J. Boe and Mary P. Atkins Boe for \$70,354.58, with interest and statutory additions that have accrued since January 31, 2020, and will continue to accrue according to law; and

B. Grant the United States its costs incurred in the commencement and prosecution of this action and such other and further relief as the Court deems proper.

**COUNT II: REDUCE TO JUDGMENT UNEMPLOYMENT TAX ASSESSMENTS  
AGAINST MARY P. ATKINS BOE**

18. The United States incorporates by reference paragraphs 1-5 & 7 of this complaint.

19. From at least 2005 until June 2017, Mary P. Atkins Boe conducted business as the sole proprietor of Twice Nice Clothing Consignment (“Twice Nice”), a consignment store, formerly located in this judicial district.

20. “Mary P. Atkins Boe dba Twice Nice Clothing Consignment” has the EIN ending in 4001.

21. For tax periods in 2005 through 2007, Mary P. Atkins Boe, as sole proprietor of Twice Nice, failed to pay unemployment tax liabilities (Form 940) or file unemployment tax returns, despite having paid sufficient wages requiring her to do so.

22. For tax periods in 2008 through 2015, Mary P. Atkins Boe, as sole proprietor of Twice Nice, failed to pay unemployment tax liabilities (Form 940) and, in January 2017, she filed late Form 940s reporting what she owed.

23. For the tax periods ending December 31, 2005 through December 31, 2015, a delegate of the Secretary of the Treasury made assessments against “Mary Atkins Boe, Twice Nice Clothing Consignment” for Form 940 taxes, plus interest, penalties, and other statutory additions.

24. The amount due for the assessments described in paragraph 24 (with interest, penalties, and any statutory additions to tax) is **\$12,985.84 as of January 31, 2020**.

25. The assessments identified in paragraph 24 above were made in accordance with law.

26. Notices of the assessments referred to in paragraph 24, and demands for payment, were given to Mary P. Atkins Boe on or about the date the assessments were made.

27. Despite notices of assessments and demands for payment, Mary P. Atkins Boe has failed to pay over the liabilities set forth in paragraph 25. Interest and statutory additions thereafter provided for by law have accrued on the assessed amounts and will continue to accrue until the liabilities are paid in full.

28. As a result, Mary P. Atkins Boe is indebted to the United States for unpaid unemployment taxes, penalties, and interest totaling \$12,985.84 as of January 31, 2020, plus interest and other statutory additions as allowed by law.

WHEREFORE, the United States requests that the Court:

- A. Enter judgment on Count II of this complaint in favor of the United States and against Mary P. Atkins Boe for \$12,985.84 as of January 31, 2020, with interest and statutory additions that have accrued and will continue to accrue according to law; and
- B. Grant the United States its costs incurred in the commencement and prosecution of this action and such other and further relief as the Court deems proper.

*(continued on the next page)*

**COUNT III: REDUCE TO JUDGMENT EMPLOYMENT TAX ASSESSMENTS  
AGAINST MARY P. ATKINS BOE**

29. The United States incorporates by reference paragraphs 1-5, 7 & 19-20 of this complaint.

30. For tax periods in 2005 through 2007, Mary P. Atkins Boe, as sole proprietor of Twice Nice, failed to pay employment tax liabilities (Form 941) or file employment tax returns.

31. For tax periods in 2008 through 2017, Mary P. Atkins Boe, as sole proprietor of Twice Nice, failed to pay employment tax liabilities (Form 941) and, in March 2017, she filed late Form 941s reporting what she owed.

32. For the tax periods ending December 31, 2005 through June 30, 2017, a delegate of the Secretary of the Treasury made assessments against “Mary Atkins Boe, Twice Nice Clothing Consignment” for Form 941 taxes, plus interest, penalties, and other statutory additions.

33. The amount due for the assessments described in paragraph 34 (with interest, penalties, and any statutory additions to tax) is **\$150,709.01 as of January 31, 2020**.

34. The assessments identified in paragraph 32 above were made in accordance with law.

35. Notices of the assessments referred to in paragraph 32, and demands for payment, were given to Mary P. Atkins Boe on or about the date the assessments were made.

36. Despite notices of assessments and demands for payment, Mary P. Atkins Boe has failed to pay over the liabilities set forth in paragraph 33. Interest and statutory additions thereafter provided for by law have accrued on the assessed amounts and will continue to accrue until the liabilities are paid in full.

37. As a result, Mary P. Atkins Boe is indebted to the United States for unpaid employment taxes, penalties, and interest totaling \$150,709.01 as of January 31, 2020, plus interest and other statutory additions as allowed by law.

WHEREFORE, the United States requests that the Court:

- A. Enter judgment on Count III of this complaint in favor of the United States and against Mary P. Atkins Boe for \$150,709.01 as of January 31, 2020, with interest and statutory additions that have accrued and will continue to accrue according to law; and
- B. Grant the United States its costs incurred in the commencement and prosecution of this action and such other and further relief as the Court deems proper.

Dated: March 9, 2020

Respectfully submitted,

/s/ Gretchen Ellen Nygaard

GRETCHEN ELLEN NYGAARD

D.C. Bar No. 1006292

Trial Attorney, Tax Division

Department of Justice

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Telephone: 202-305-1672

Fax: 202-514-6770

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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Gretchen Nygaard, PO Box 7238, Ben Franklin Station,  
Washington, DC 20044  
202-305-1672

**DEFENDANTS**

Robert Boe &amp; Mary P. Atkins Boe

County of Residence of First Listed Defendant Minnehaha County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question  
(U.S. Government Not a Party)  
☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
26 USC 7401

Brief description of cause:

Suit to reduce to judgment federal income tax assessments

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
234,049.43

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

03/09/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Gretchen Ellen Nygaard

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_